A

**FAISAL ABD AZIZ**

**v.**

**PP**

B

COURT OF APPEAL, PUTRAJAYA
HASAN LAH JCA
ABDUL MALIK ISHAK JCA
MOHAMED APANDI ALI JCA
[CRIMINAL APPEAL NO: B-05-18-2009]

C

8 JUNE 2011

***CRIMINAL LAW:*** *Dangerous Drugs Act 1952 - Section 39B(1)(a) - Trafficking in dangerous drugs - Appeal against conviction and sentence - Whether there was affirmative finding of possession - Whether element of*

D

*trafficking made out - Whether act of pointing to location of cannabis admissible under s. 27 Evidence Act 1950*

***EVIDENCE:*** *Information leading to fact discovered - Evidence Act 1950, s. 27 - Cannabis discovered in vicinity of appellant - Appellant*

E

*pointed to direction where cannabis located - Whether information admissible*

The appellant was convicted for an offence under s. 39B(1)(a) Dangerous Drugs Act 1952 ('DDA') and sentence under s. 39B(2) DDA. L/Cpl. Mohd Hafiz bin Zainuddin ('SP'), a police personnel,

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had contacted the appellant *via* his mobile no. for the purchase of cannabis worth RM100 to which the appellant agreed. The appellant then instructed SP2 of the location for the delivery. SP2 then informed his superior, Insp. Syed Nadzely bin Syed Jaafar, ('SP3') of the arrangement and an ambush team was mobilized.

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The appellant was seen at the agreed location and SP2 inquired about the cannabis purchase. The appellant then went to the bushes nearby and took out two transparent plastic packages suspected to be cannabis and handed it over to SP2. The appellant was then arrested by SP2 and questioned as to the

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whereabouts of the other drugs. He pointed towards the bushes about two meters away and took out a bag from the bushes and handed it SP3. The bag ('P9') contained small packages of cannabis. A search list of the recovered items was issued and acknowledge by the appellant. The appellant made this appeal on

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the following grounds: (i) there was no affirmative finding on the issue of possession; (ii) the element of trafficking defined under

s. 2 of the Act was not made out; and (iii) the act of the appellant pointing out to the bushes was not admissible under s. 27 Evidence Act 1950. A

**Held (dismissing the appeal; affirming the conviction and sentence)** B

**Per Mohamed Apandi Ali JCA delivering the judgment of the court:**

**(1)** On the issue of possession the main contention was the packages of cannabis found in P9. The factual matrix as to how P9 was recovered could be seen in the evidence of SP2 and it was corroborated by SP3. Furthermore the evidence given by SP2 and SP3 was corroborated by the search list that was issued by SP3 and affirmed by the appellant. The trial judge had not erred in law or in facts in his finding of possession. (para 6) C D

**(2)** There was sufficient direct evidence to prove trafficking. The events leading to the arrest of the appellant was spearheaded by SP2's tele-conversation with the appellant. The main essence of the conversation was the sale of cannabis worth RM100 to which the appellant agreed. At the pre-arranged meeting the two packages of cannabis was delivered to SP2. Although SP2 did not make the payment for the cannabis, it was settled law that to constitute actual delivery it was not necessary for the agreed price be paid before or upon the physical delivery of the drugs. *(Tarmizi Yacob & Anor v. PP & Another Appeal;* refd). The facts and surrounding circumstances showed that SP2 was acting as an agent provocateur and was therefore protected by the provisions of ss. 40A(1) and (2) DDA. Furthermore there was credible evidence that the appellant had acted in concert in the sale of the cannabis to SP2. (para 6) E F G

**(3)** The information given by the appellant by way of pointing to a particular spot of bushes was made spontaneously to the question posed by SP3. It was not made after a long series of interrogation. On this issue the trial judge had correctly ruled that the information given by the appellant was admissible. (para 6) H I

***Bahasa Malaysia*** *Translation Of Headnotes*

Perayu telah disabitkan bagi kesalahan di bawah s. 39B (1)(a) Akta Dadah Berbahaya 1952 ('DDA') dan dihukum di bawah s. 39B(2) DDA. L/Cpl. Mohd Hafiz bin Zainuddin ('SP2'), seorang anggota polis, telah menghubungi perayu melalui no. telefon bimbitnya untuk tujuan membeli ganja bernilai RM100 daripadanya dan ini disetujui oleh perayu. Perayu kemudiannya mengarahkan SP2 kepada lokasi penghantaran. SP2 memaklumkan pegawai atasannya, Insp. Syed Nadzely bin Syed Jaafar, ('SP3') megenai perjumpaan itu dan satu pasukan serangan hendap dikerahkan. Perayu dilihat di lokasi yang dipersetujui dan SP2 bertanya kepadanya megenai pembelian ganja. Perayu kemudian telah pergi ke semak berhampiran dan mengambil dua pakej plastik lutsinar yang disyaki ganja dan menyerahkannya kepada SP2. Perayu kemudiannya ditangkap dan disoal megenai lokasi dadah yang lain. Perayu menunjuk ke arah semak kira-kira dua meter darinya dan mengambil keluar beg dari semak itu dan menyerahkannya kepada SP3. Beg ('P9') itu mengandungi beberapa pakej ganja. Satu senarai item-item yang didapatkan telah disediakan dan ini disahkan oleh perayu. Perayu membuat rayuan ini atas alasan-alasan yang berikut: (i) tidak ada penemuan afirmatif mengenai isu milikan; (ii) unsur penyeludupan seperti dinyatakan di bawah s. 2 DDA gagal dibuktikan; dan (iii) perbuatan perayu menunjuk ke arah semak adalah bukan keterangan boleh terima di bawah s. 27 Akta Keterangan 1950.

**Diputuskan (menolak rayuan; mengesahkan sabitan dan hukuman)**
**Oleh Mohamed Apandi Ali HMR menyampaikan penghakiman mahkamah:**

**(1)** Mengenai isu pemilikan, perdebatan utama adalah pakej-pakej ganja yang ditemui dalam P9. Matriks fakta tentang bagaimana P9 telah ditemui dapat dilihat daripada keterangan SP2 dan ia disokong oleh SP3. Tambahan pula, keterangan yang diberikan oleh SP2 dan SP3 telah disokong oleh senarai item-item yang didapatkan yang disediakan oleh SP3, dan ini telah disahkan oleh perayu. Hakim bicara telah tidak khilaf dari segi undang-undang atau fakta dalam keputusannya.

**(2)** Terdapat keterangan terus yang mencukupi untuk membuktikan penyeludupan. Kejadian yang membawa kepada penangkapan perayu diterajui oleh perbualan telefon SP2 dengan perayu. Intipati utama perbualan itu ialah penjualan ganja bernilai RM100 yang disetujui perayu. Pada perjumpaan yang diatur itu, kedua-dua pakej ganja diberikan kepada SP2. Walaupun SP2 tidak membuat pembayaran untuk ganja, undang-undang mantapnya adalah penyerahan sebenar tidak semestinya bermaksud pembayaran harga yang dipersetujui sebelum atau apabila penyerahan perlu dibuat *(Tarmizi Yacob & Anor v. PP & Another Appeal;* dirujuk). Fakta dan halkeadaan kes menunjukkan bahawa SP2 telah bertindak sebagai ejen perangkap dan oleh itu beliau dilindungi di bawah peruntukan ss. 40A (1) dan (2) DDA. Tambahan pula terdapat bukti yang boleh dipercayai bahawa perayu bertindak secara bersama dalam penjualan ganja kepada SP2.

**(3)** Maklumat yang diberikan oleh perayu dengan cara menunjuk ke arah semak itu dibuat secara spontan kepada soalan daripada SP3. Ia tidak dibuat selepas beberapa siri soal siasat yang lama. Mengenai isu ini, hakim bicara telah membuat keputusan yang betul dalam menerima maklumat yang diberikan oleh perayu.

**Case(s) referred to:**

*Arumugam Periasamy v. PP [2005] 3 CLJ 685 CA* ***(refd)***
*Francis Antonysamy v. PP [2005] 2 CLJ 481 FC* ***(refd)***
*Goi Ching Ang v. PP [1999] 1 CLJ 829 FC* ***(refd)***
*Hanafi Mat Hassan v. PP [2006] 3 CLJ 269 CA* ***(refd)***
*Namasiyiam Doraisamy v. PP & Other Cases [1987] 1 CLJ 540; [1987] CLJ (Rep) 241* ***(refd)***
*PP v. Er Ah Kiat [1965] 1 LNS 136 HC* ***(refd)***
*PP v. Haling Arala Jimjani [2008] 4 CLJ 163 CA* ***(refd)***
*PP v. Mansor Md Rashid & Anor [1997] 1 CLJ 233 FC* ***(refd)***
*PP v. Saari Jusoh [2007] 2 CLJ 197 FC* ***(refd)***
*PP v. Toh Ah Keat [1976] 1 LNS 118 HC* ***(refd)***
*Roslan Abdullah v. PP [2010] 1 CLJ 685 CA* ***(refd)***
*Tarmizi Yacob & Anor v. PP & Another Appeal [2010] 8 CLJ 501 FC* ***(refd)***

**Legislation referred to:**

Dangerous Drugs Act 1952, ss. 2, 37A(1)(b), 39B(1)(a), (2), 40A(1), (2)
Evidence Act 1950, ss. 24, 27

A *For the appellant - Bernard George; M/s Tay, Bernard & Cheong*
*For the respondent - Najib Zakaria DPP*

*[Appeal from High Court, Shah Alam; Criminal Trial No: 45-83-2006]*

*Reported by Melinda Robert*

B

## JUDGMENT

### Mohamed Apandi Ali JCA:

C

**[1]** The appellant has been convicted for an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952 and sentenced to death under s. 39B(2) of the Act. The charge against the appellant reads as follows:

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> Bahawa kamu pada 23 Januari 2006, jam lebih kurang 5.30 petang, di kawasan kelapa sawit Cyberjaya Dengkel, di dalam Daerah Sepang di dalam Negeri Selangor Darul Ehsan, telah memperedarkan dadah berbahaya jenis Cannabis seberat 406.93 gram, oleh yang demikian kamu telah melakukan suatu kesalahan
> E di bawah Seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah Seksyen 39B(2) Akta yang sama.

### Factual Background

**[2]** As per the opening speech by the prosecution, the case for
F the prosecution commenced with the usage of an agent provocateur in the form of a police personnel, L/Cpl. Mohd. Hafiz bin Zainuddin (SP2). The facts of the case can be briefly narrated as follows:

G (a) On 23 January 2006 at about 1pm, SP2, L/Cpl. Mohd. Hafiz acting on information received and upon receiving a contact number from a source, contacted the appellant *via* his hand-phone. SP2 contacted the appellant *via* the said given number, which was 019-6324234. Masquerading as a potential
H buyer, SP2 enquired to purchase Cannabis worth RM100. The man at the end of the line responded positively and an arrangement was made for the purchase to be done later in the late afternoon on the same day, ie, on 23 January 2006.

I (b) SP2 then informed his superior, Insp. Syed Nadzely bin Syed Jaafar (SP3) of the arrangement for the purchase of the drugs. SP3 then mobilized an ambush party comprising SP2 and seven other police personnels. At 5.05pm SP2 made a second

call to the hand-phone number 019-6324234 and the person who answered the call sounded like the one who responded to the earlier call. The person informed that he was within the vicinity of an oil palm estate, near University Lim Kok Wing in Cyberjaya. The police party, led by SP3 then proceeded to the said oil palm estate.

(c) Before going into the estate, SP2 made a 3rd call to the same hand-phone number, to inform that he has arrived. The answerer directed SP2 to walk into the estate. The time was about 5.30pm. SP2 and SP3 walked into the estate and the rest of the police party hid in the bushes within the said estate. SP2 walked in front, followed by SP3. SP2 then made another call to the same number and by then SP2 saw the appellant using his hand-phone and waved to SP2, beckoning SP2 to walk towards him.

(d) Upon coming face to face with the appellant, SP2 told the appellant of the intended purchase of RM100 worth of ganja (Cannabis). The appellant then went to some bushes nearby and took out something from the bushes and handed two transparent plastic packages suspected to contain Cannabis to SP2. SP2 took the two transparent plastic packages that was handed over by the appellant and passed the two packages to SP3. At that very moment SP2 identified himself as police and arrested the appellant. There was a brief struggle but with help of SP2, the appellant was subdued and handcuffed. A body search was done on the appellant but nothing incriminating was found on his body. The appellant was handcuffed with his hands at the back.

(e) SP3 then proceeded to administer the caution under s. 37A(1)(b) of the Dangerous Drugs Act 1952 to the appellant before questioning the appellant of the whereabout of any other drugs. The appellant pointed to the bushes, about 2 meters away from where he was arrested. The appellant showed a bag in the bushes, and with his handcuffed hands, he took the bag and handed it to SP3. SP3 took the bag and upon examination found it to contain several packages containing ganja (Cannabis).

(f) The appellant, together with the bag containing several packages of ganja and his hand-phone (P16) were then taken to the Narcotic Office in IPD Sepang. The drugs recovered were as follows:

(i) 2 small packages containing Cannabis, produced and marked as exhs. P8A and P8B.

(ii) A small "old spice" bag (exh. P9) containing:

(1) A plastic package containing a compressed slab of Cannabis (produced and marked as exh. P10A).

(iii) 80 small plastic packages containing Cannabis, produced and marked as exh. P12(1) to P12(80).

(iv) 44 small plastic packages containing Cannabis, produced and marked as exh. P13(1) to P13(44).

A Search List of the recovered items was issued and acknowledged by the appellant. The Search List was marked as exh. P17.

(g) The appellant and the exhibits were then handed to the Investigating Officer, C/Insp. Saidon bin Halid, SP4. SP4 doubled-up as a police photographer and took photographs of the exhibits at the scene of the offence. The photographs were produced and marked as exh. P14 A-C. The exhibits recovered were later then sent to the Chemist, Abdul Rahim bin Shadan, SP1. On analysis, SP1 found the exhibits to contain Cannabis, of which the break-down figures are as follows:

| | | |
|---|---|---|
| (i) | In P8A and P8B | : 14.93 grams of Cannabis |
| (ii) | In P12(1) - P12(80) | : 26.74 grams of Cannabis |
| (iii) | In P13(1) - P13(44) | : 232.2 grams of Cannabis |
| (iv) | In P10A | : 133.06 grams of Cannabis |
| | Total net weight | : 406.93 grams of Cannabis |

SP1 prepared a Chemist Report that was produced and marked as exh. P6.

**Findings By The High Court**

**[3]** At the end of case for the prosecution, the learned trial judge ruled that there was a prima facie case against the appellant for the offence of trafficking in dangerous drugs under s. 39B(1)(a) of the Dangerous Drugs Act; and accordingly called for the defence.

**[4]** The appellant elected to give evidence on oath. The learned trial judge, at the end of the trial, having evaluated all the evidence adduced at the trial, concluded, *inter alia*, that the defence are just bare denials. The judge then made a finding that the defence failed to raise any reasonable doubt and corollary to that found that the prosecution had proved its case beyond reasonable doubt and accordingly convicted and sentenced the appellant.

**Submissions By The Appellant**

**[5]** Learned counsel for the appellant in his oral and written submissions, argued on three main issues:

(1) Issue of possession; where it was submitted that there was no affirmative finding on this issue.

(2) Issue of trafficking: It was submitted that there is no trafficking as defined under s. 2 of the Dangerous Drugs Act. It was further submitted that if at all, the appellant was in possession of the drugs in exhs. P8A and P8B and such possession was only "passive possession". In support of the argument, learned counsel relied on the cases of *PP v. Haling Arala Jimjani* [2008] 4 CLJ 163 and *Arumugam Periasamy v. PP* [2005] 3 CLJ 685.

(3) Issue of information leading to discovery under s. 27 of the Evidence Act 1950. It was submitted that the act of pointing to the bushes by the appellant is not sufficient to qualify as information under s. 27. On this argument, learned counsel cited the case of *Roslan Abdullah v. PP* [2010] 1 CLJ 685.

**Our Findings And Conclusion**

**[6]** As the appellate court, our task is to peruse the record of appeal and upon hearing submissions by both parties we have to evaluate whether the trial judge has erred in his findings and conclusion on the issues raised by the appellant. We shall deal with the respective issues accordingly.

(a) On the issue of possession, we note that there is no issue in respect of the first 14.93 grams of Cannabis contained in the two small packages marked as exhs. P8A and P8B. These two packages were the ones that were handed over to SP2 by the appellant, prior to his arrest. The main bone of contention is in respect of the rest of packages of Cannabis found in the 'old spice' bag (P9).

From the evidence adduced, the factual matrix as to how P9 was recovered can be seen in the evidence of SP2, who narrated that:

> OKT bawa saya dan Insp. Syed di semak berhampiran dan tunjukkan satu beg yang tersorok di kawasan semak.
>
> Tempat OKT ditangkap dan beg disorok lebih kurang 2 meter.
>
> Dengan kedua-dua tangan digari di belakang OKT mengambil beg tersebut dan serahkan kepada Insp. Syed,
>
> Insp. Syed membuka beg tersebut dan membuat pemeriksaan.
>
> Saya nampak beberapa paket plastik lutsinar yang disyaki berisi ganja – banyak paket-paket kecil.

This evidence was corroborated by SP3 who said:

> Lanjutan dari OKT menunjukkan tempat dadah yang disorok – tidak jauh dari tempat tangkapan.
>
> OKT tunjukkan 1 beg warna biru disorokkan dalam semak.
>
> OKT ambil beg tersebut dalam keadaan tangannya digari di belakang dan serahkan kepada saya.
>
> Saya membuka zip beg dan dapati paket lutsinar berisi tumbuhan kering dalamnya.
>
> Saya tutup zip beg dan bawa OKT dan barang kes menuju ke jalan besar.

The oral evidence of SP2 and SP3 was further corroborated by the Search List that was issued by SP3 and acknowledged by the appellant, on the date of the alleged offence. The Search List was produced and marked as exh. P17. It is noted that there was no cross-examination on this exhibit.

A quick look at the grounds of judgment, will indicate that the trial judge had in fact made an affirmative finding of possession of the drugs by the appellant. In his judgment, the judge (at p. 55 of the record of appeal) wrote:

> It is also pertinent to stress that the manner of the packaging in small packets and the circumstances relating to the accused conduct of handing the two packets P8A and P8B and the act of pointing and picking the Old Spice bag P9 and handing it to SP3 to my mind not only established custody and control over P8A and P8B and P9 but also knowledge as to the contents of the cannabis in P8A and P8B and the cannabis content of P9.
>
> The manner and the place where P9 was found namely concealed in the bushes clearly establishes that it was only the accused who knew of its placement and concealment. It cannot have been found without the accused conduct of pointing to P9 and the plastic packets P8A and P8B was taken from the same place where P9 was found.

Based on the available evidence, we find that the learned trial judge has not erred in law or on facts in making such a finding.

(b) On the issue of trafficking. From the evidence adduced, we are of the view that there are sufficient direct evidence to prove trafficking. It must be recalled that in this case the chronology of events leading to the arrest of the appellant was spearheaded by the 1st phone call to him by SP2 at about 1pm on the date of the offence ie, 23 January 2006. The essence of the conversation was the sale of ganja (Cannabis) worth RM100. The appellant responded to the proposed sale by saying:

> Abang datang sahaja, semua barang ada.

This can be seen in the evidence of SP2, at p. 18 of the record of appeal. Subsequent to that, later in the afternoon, an arrangement was made for the sale and purchase of the drugs. The location and time was then agreed. It was at the agreed location and time that SP2 met the appellant. It was clear that the purpose of the meeting was for the buying and selling of the drugs.

A At the pre-arranged meeting, the two packages (P8A and P8B) of cannabis were handed over to SP2. But as the evidence disclosed, SP2 did not hand over the purchase price of RM100 to the appellant, but instead arrested him the moment the incriminating drugs changed hands. On this issue it is B suffice to refer to the Federal Court decision in *PP v. Saari Jusoh* [2007] 2 CLJ 197 which extensively dealt with the definition of "trafficking" in s. 2 of the Dangerous Drugs Act 1952. In that case, Augustine Paul FCJ wrote:

C > Where a property has been transferred and the price has not been paid, the contract becomes executed with a cause of action for the unpaid price. A sale is therefore complete upon transfer of the property in the goods even though the price has not been paid. A sale in this sense cannot therefore be described as an act preparatory to the sale or D as negotiations leading to the sale or even as an agreement for a sale.

And Abdul Aziz Mohamed FCJ in concurring held that:

E > So long as the delivery is for money – which the delivery in this case was – as opposed to delivery as a gift or on some other basis, it is selling even though the money for which the goods are delivered has not passed to the seller.

We are also mindful of the development of the law on this F issue, where the Federal Court in *Tarmizi Yacob & Anor v. PP & Another Appeal* [2010] 8 CLJ 501 has further extended the situation that amounted to drug transaction for purposes of trafficking. Richard Malanjum CJ (Sabah & Sarawak) in delivering the judgment, *inter alia*, wrote:

G > On the issue of delivery it is now a settled law that to constitute actual delivery it is not necessary that the agreed price must be paid upon or before the physical delivery of the drugs. (See *Wan Mazuki b Wan Abdullah v. PP* Rayuan Jenayah No. 05-56-2008(T). As such the decision in *PP v.* H *Sa'ari Jusoh (supra)* should not be narrowly construed. And in this case the transaction was in fact completed since the appellants had produced the cannabis to PW10 and were only waiting for the payment when the police moved in to apprehend them.

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From the facts and surrounding circumstances, of this case, it was clear that SP2 was an agent provocateur. This fact was earlier intimated by the prosecution *vide* the opening speech (exh. P4). SP2's role in this case is almost similar to that of the agent provocateur in the case of *Namasiyiam Doraisamy v. PP & Other Cases* [1987] 1 CLJ 540; [1987] CLJ (Rep) 241. By virtue of his status as an agent provocateur, SP2 "notwithstanding any rule of law or any other written law to the contrary" is protected by the provisions of s. 40A(1) and (2) of the Dangerous Drugs Act 1952.

Furthermore, as in the case of *PP v. Mansor Md. Rashid & Anor* [1997] 1 CLJ 233, in this appeal there is more than credible evidence from the testimony of SP2 that the appellant had acted in concert in the sale of the Cannabis to him.

The authorities of *Haling Arala Jimjani* and *Arumugam Periasamy*, cited by counsel for the appellant are irrelevant for purposes of this appeal, as the issues in the two cases centered over the usage of double presumptions in respect of possession and trafficking. The facts in those two cases are different as they relate to the findings of packages of drugs on the body of the accused (in *Haling Arala Jimjani*) and on the carrier of a motorcycle (in *Arumugam Periasamy*). There were no evidence of any negotiation or arrangement for the sale of drugs in the said cited cases.

(c) On the last issue of information under s. 27 of the Evidence Act, that section reads as follows:

> 27(1) When any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of that information, whether the information amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved.

It is trite law that s. 27 of the Act is to be read independently from the provisions pertaining to confession under s. 24 of the Act. Reference on this matter can be seen in the cases of: *Goi Ching Ang v. PP* [1999] 1 CLJ 829; *Hanafi Mat Hassan v. PP* [2006] 3 CLJ 269; and *Francis Antonysamy v. PP* [2005] 2 CLJ 481.

Furthermore in this instant appeal, the information was given in the hearing of SP2, who as discussed earlier, was an agent provocateur and thus protected under s. 40A(2) of the Dangerous Drugs Act 1952, which under the law makes the information admissible as evidence at the trial. There are no two ways about that.

Furthermore, the rationale of the admissibility of information under s. 27 is because the fact of discovery rebuts the presumption of falsity arising from the probability of it being made as a result of inducement or pressure (see *PP v. Toh Ah Keat* [1976] 1 LNS 118).

In the case of *Roslan Abdullah v. PP* [2010] 1 CLJ 685, that was relied upon by counsel for the appellant, the facts pertaining to the information are different from that in the present appeal. In that case the alleged information was recorded hours after it was given and the accused was "arrested miles away from the house where the drugs were later found in a door-less bedroom."

It must be emphasized that the information (by way of pointing to a particular spot of bushes) given by the appellant was made spontaneously to the question posed by SP3. It was not made after a long series of interrogation, of which even if it is so, such information is admissible as so long as it leads to the discovery of the subject-matter of the offence. This was so held by Raja Azlan Shah J (as he then was) in *PP v. Er Ah Kiat* [1965] 1 LNS 136; where he held that: "In my opinion the fact of discovery of … lends colour to the truth of the statement." In that case the accused's information was by way of pointing to the spot where a hand-grenade was buried.

On this issue, the learned trial judge, based on the evidence before him had correctly ruled that the information given by the appellant was admissible. He wrote:

> I ruled that the information by the accused through his conduct of pointing towards P9 in response to the question posed by SP3 and in the situation of him being hand cuffed is admissible under Section 27 of the Evidence Act as voluntariness is not an issue – *Goi Ching Ang v. PP* [1999]

1 CLJ 829 and also under Section 8 of that same Evidence Act relating to conduct. To my mind the discovery of P9 is admissible under Section 27 of the Evidence Act as all the 3 pre-requisites have been proved namely (a) the information was received from the accused; (b) the accused was in the custody of the police at the time of giving the information; and (c) fact has been discovered as a consequence of such information.

**[7]** Having addressed the above issues and after evaluating all the evidence, including that adduced by the appellant in his defence, we find that the appellant's denials did not raise a doubt on the prosecution's case. It is our finding that the learned trial judge had considered all the evidence very carefully and had made correct findings and conclusion. We find no plausible reason to interfere with the said findings and decision, as it was based on actual evidence and corroborated by material particulars by inference reasonably and properly drawn from other evidence adduced at the trial.

**[8]** For the above reasons, we unanimously find no merit in this appeal. The appeal is therefore dismissed and the conviction and sentence imposed by the High Court are hereby affirmed.